94 707 OCT 18 1994

No. OFFICE OF THE CLERK

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1994

Don Fuller, pro se

Petitioner,

vs.

Secretary of Defense, et al.

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

PETITIONER'S APPENDIX

Don Fuller, Pro Se
570 Minnesota Law Center
514 Nicollet Mall
Minneapolis, MN 55402
512-332-0938

RECEIVED
OCT 19 1994
OFFICE OF THE CLERK
SUPREME COURT, U.S.

APPENDIX A

The Eighth Circuit Court Opinion fails to note that the original "anonymous phone tip" to DIS was from a Eden Prairie assistant city attorney after Don Fuller had caught and confronted her lying on the record to a judge.

The Eighth Circuit Court Opinion fails to note that the allegations in the civilian community were initiated by a person who had been hospitalized as the result of with alcohol abuse and suffered periodic bouts of depression and hallucination due to a thyroid disorder.

The original Complaint made in civil court by the person admitted that Don Fuller had not been in contact with her but that the assistant Eden Prairie City attorney had told her to file it since Don Fuller was attempting to get the medical records confirming her periods of hospitalization for alcohol abuse.

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 93-2791

Don B. Fuller,

Appellant,

Appeal from the United States District Court for the District of Minnesota.

v.

The Secretary of Defense of the United States; The Secretary of the Navy; The Commandant of the United States Marine Corps; The Director, Marine Corps Reserve Support Center; The Commanding General, Fourth Marine Division, United States Marine Corps,

Appellees.

Submitted: May 10, 1994

Filed: July 18, 1994

Before MAGILL, Circuit Judge, FLOYD R. GIBSON and JOHN R. GIBSON, Senior Circuit Judges.

MAGILL, Circuit Judge.

Don B. Fuller appeals from the district court's[1] order dismissing his complaint, denying his motion for leave to amend the complaint, and denying his motion for Rule 11[2] sanctions. We affirm.[3]

I. BACKGROUND

Fuller filed suit in district court to obtain review of an administrative decision to separate him from the United States Marine Corps Reserves (the Reserves). Fuller entered the Reserves upon retirement from the United States Marine Corps. A practicing attorney, Fuller eventually rose to the rank of colonel.

In 1990, the Defense Investigative Service (DIS) learned that a state court had issued a restraining order preventing Fuller from harassing his former girlfriend who accused him of stalking her. In the course of its investigation, DIS also discovered that Fuller may have engaged in unprofessional behavior during the court proceedings regarding the stalking incident. Eventually, a Board of Inquiry (the Board) convened to

determine whether Fuller should) be separated from the Reserves. Two possible bases for separation were considered: misconduct related to the stalking incident and substandard performance of duty as evidenced by Fuller's demonstration of poor leadership qualities. A hearing was held that was attended by Fuller and his military counsel.

After consideration of both parties' evidence and arguments, the Board found that the evidence supported a finding of misconduct and substandard performance. The Board recommended that Fuller be retired from the Reserves at the inferior grade of lieutenant colonel. In February 1992, the Secretary of the Navy approved the recommendation, noting that Fuller lacked sufficient time as a full colonel to retire in that grade.

In March of 1992, this action was commenced by Fuller against the United States Secretary of the Defense, the Secretary of the Navy, the Commandant of the Marine Corps, the Director of the Marine Corps Reserve Center,

and the Commanding General of the 4th Marine Division of the United States Marine Corps (collectively, the defendants). Fuller, alleging that the Board hearing did not afford him due process, requested the district court to (1) enjoin the enforcement of and set aside the retirement decision, (2) restore him to his former status, (3) expunge from his military records references to the stalking incident and the DIS investigation, (4) order the defendants to provide him with precise standards of leadership, and (5) order a new hearing.

Pending evaluation for physical or mental disability by a Physical Evaluation Board (PEB), the defendants agreed to refrain from separating Fuller from the Reserves. Ultimately, the PEB found that Fuller was physically qualified for service and thus ineligible for a preferable medical retirement. Fuller moved for an injunction preventing his separation from the Reserves. The district court issued a thirty-day stay,

pending its decision on Fuller's motion for injunctive relief. In March 1993, injunctive relief was denied. Fuller retired on April 1, 1993.

After Fuller's retirement, the defendants moved to dismiss the complaint. Fuller, in turn, moved to file an amended complaint and requested the imposition of Rule 11 sanctions against the prosecuting attorney and an attorney from the Judge Advocate General's Corps (JAG). The district court granted the motion to dismiss the complaint and denied Fuller's motions. Fuller timely appealed.

III. DISCUSSION

A. The Motion to Dismiss

The district court granted the defendants' motion to dismiss. The district court based its dismissal on (1) Fuller's failure to bring his retirement and expungement claims before the Board of Correction for Military Records (BCMR) and (2) the defendants' immunity from suit because they were sued in their official

capacity. Fuller conceded that the original complaint was subject to dismissal for the reasons cited by the district court, and hence he did not oppose the motion to dismiss the complaint. Rather, he filed a motion for leave to amend the complaint. Because Fuller did not oppose the motion to dismiss the complaint, we decline to review this claim.[4]

B. The Motion to Amend the Complaint

We review the denial of a motion for leave to amend a complaint for an abuse of discretion. Brown v. Wallace, 957 F.2d 564, 565 (8th Cir. 1992). Because defendants had already filed their answer to the original complaint at the time the motion was filed, Fuller may only amend the complaint by leave of court. See Fed. R. Civ. P. 15(a). "[L]eave shall be freely given when justice so requires." Id. And, leave to amend should be granted absent a good reason for the denial, such as undue delay, bad faith, undue prejudice to the nonmoving party, or futility.

Thompson-El v. Jones, 876 F.2d 66, 67 (8th Cir. 1989).

Fuller filed a ninety-five-page proposed amended complaint (Amended Complaint). Raising eighteen counts, the Amended Complaint dismissed claims against the Commandant of the Marine Corps, the Director of the Marine Corps Reserve Support Center, and the Commanding General of the 4th Marine Division, and sought to add as defendants, Richard Cheney, H. Lawrence Garrett III, Robert J. Turay, Robert Simpson, Lee R. Sampson, Lee Olson, D.L. Haurilick, Robert Small, Alicia Connolly, and the United States of America.

The Amended Complaint brought Bivens actions against five DIS agents. See Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 397 (1971) (authorizing suits for damages against federal officials based upon a deprivation of constitutional rights). It also brought Bivens actions against Richard Cheney, the former Secretary of Defense, for failing to supervise

and train DIS agents, and against H. Lawrence Garrett III, the former Secretary of the Navy, for failing to adequately train and supervise Navy and Marine personnel. Fuller further claimed that Assistant United States Attorney Robert Small and JAG attorney Alicia Connolly violated his constitutional rights by submitting false and misleading documents in this action. Fuller sought monetary relief from all individual defendants. Finally, Fuller reasserted his earlier claim that the Board hearing violated his right to due process of law and sought reinstatement to his former rank of full colonel.

The district court denied Fuller's motion for leave to amend the complaint, finding that Fuller's retirement claim still had not been brought before the BCMR and that the Bivens claims were futile under the Feres doctrine, see Feres v. United States, 340 U.S. 135, 146 (1950) (the United States is immune from tort liability for injuries arising out of and in the course of military service). See generally

Chappell v. Wallace, 462 U.S. 296 (1983). In addition, the district court found that Fuller's attempt to add multiple new defendants and claims substantially changed the focus of the action and was thus confusing and inefficient.

We hold the district court did not abuse its discretion when it denied Fuller's motion for leave to amend the complaint. Fuller's Amended Complaint sought to add ten additional defendants and substantially different claims arising from fundamentally different facts. Fuller sought to expand his claims from those seeking relief from the decision to retire him as a lieutenant colonel to one asserting significant constitutional claims against various government officials. Justice does not require a district court to allow a defendant to alter his complaint in such a manner. See Brown, 957 F.2d at 566; Weigand v. Afton View Apartments, 473 F.2d 545, 549 (8th Cir. 1973); accord Faser v. Sears, Roebuck Co., 674 F.2d 856, 859-60 (11th Cir. 1982).[5]

As to the due process claim, we hold the district court did not abuse its discretion because such an amendment would have been futile. Fuller's claim seeks judicial relief for a discretionary, and hence unreviewable, decision of the Secretary of the Navy. See Wood v. United States, 968 F.2d 738, 739-40 (8th Cir. 1992). Had Fuller brought this claim before the BCMR, such "decisions are subject to judicial review and can be set aside if they are arbitrary and capricious, or not based on substantial evidence." See Chappell, 462 U.S. at 303. The district court properly dismissed the motion for leave to amend this claim because it is a "nonjusticiable claim[] involving the military structure." Wood, 968 F.2d at 739.

We find no merit to Fuller's motion for Rule 11 sanctions against Small and Connolly.

III. CONCLUSION

We affirm the order of the district court dismissing Fuller's complaint, denying him

leave to amend the complaint, and denying RuIe 11 sanctions.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS,
EIGHTH CIRCUIT.

Footnotes:

1. The Honorable Harry H. MacLaughlin, Senior United States District Judge for the District of Minnesota.

2. Federal Rule of Civil Procedure 11.

3. We grant Fuller's motions to supplement the record.

4. We note in addition that the initial claim for relief raised by Fuller in his complaint--the request for an injunction preventing his retirement--is now moot as a result of Fuller's retirement from the reserves on April 1, 1993.

5. We, consequently, need not review the district court's findings regarding Fuller's constitutional claims for damages.

APPENDIX B

The District Court Opinion fails to note that the original "anonymous phone tip" to DIS was from a Eden Prairie assistant city attorney who Don Fuller had caught and confronted concerning lying on the record to a judge.

The District Court opinion fails to identify the "anonymous phone tipster" who reported that Petitioner had "fudged" his medical reports. The "anonymous phone tipster" was an insurance company employee who Don Fuller had reported for trying to deny coverage physical rehabilitation for civilian auto injuries. Don Fuller reported, as is required by law, that the Marine Corps had found him medically fit to again serve. The insurance company employee then denied coverage stating that if you are "fit enough to be a Marine you are not in need of any further accident related medical benefits". Fuller had responded that he could not serve but was found fit to serve. An "anonymous phone tip" resulted. Fuller spent a year and more than $7,500.00 to correct the military records and to again be cleared to serve as a Reserve officer without pay.

The District Court Opinion fails to note that the allegations in the civilian community were initiated by a person who had been hospitalized as the result of with alcohol abuse and suffered periodic bouts of depression and hallucination due to a thyroid disorder.

The original Complaint made in civil court by the person admitted that Don Fuller had not been in contact with her but that the assistant Eden Prairie City attorney had told her to file it since Don Fuller was attempting to get the medical records confirming her periods of hospitalization for alcohol abuse.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Don B. Fuller,

Plaintiff,

CIVIL
4-92-233

MEMORANDUM AND ORDER

The Secretary of Defense of the United States;
The Secretary of the Navy;
The Commandant of the Marine Corps;
The Director, Marine Corps Reserve Center;
and The Commanding General,
Fourth Marine Division, United States Marine Corps, Defendants.

Don B. Fuller, 570 Towle Building, 320 Second Avenue South, Minneapolis, MN 55401, pro se.

Thomas B. Heffelfinger, United States Attorney, Robert M. Small, Assistant U.S. Attorney, 234 U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401, for defendants.

This matter is before the Court on defendants' motion to dismiss. The motion will be granted.

FACTS

This action arises out of plaintiff's separation from the United States Marine Corps Reserve. Plaintiff is a practicing attorney who appears pro se in this action. He was

commissioned as an officer in the United States Marine Corps in 1966; after receiving an honorable discharge in 1973, plaintiff affiliated with the Reserve, eventually rising to the rank of colonel. In February 1988, plaintiff suffered a head injury which rendered him physically unqualified to perform his military duties. In July 1989, plaintiff had a physical examination and was declared fit for duty; however, in October of 1989, the Bureau of Naval Medicine learned that plaintiff had "fudged" on his July 1989 physical, and consequently declared him unfit for duty. A Physical Evaluation Board (PEB) found plaintiff fit for duty once again in October 1990.

In July 1990, the Defense Investigative Service (DIS) learned that in September 1989, plaintiff's former girlfriend had filed a complaint against him with the Eden Prairie Police Department. The complaint alleged that plaintiff had harassed the complainant by telephoning her up to six times a day, writing

her letters stating that he wanted her to be his wife and have his children, sending her pictures and chocolates in the mail, and waiting for her outside her apartment. Plaintiff allegedly continued to harass the complainant after she asked him to stop; eventually, a state court issued a restraining order against plaintiff. In its investigation of the Eden Prairie matter, the DIS learned that plaintiff had referred to his military responsibilities, his top secret clearance, and his military assignments in interviews with police officers. The DIS also learned of allegations that plaintiff's conduct in the court proceedings had been unprofessional. Based on its investigation, the DIS recommended that plaintiff undergo a psychiatric evaluation.

In September 1991, in response to the DIS report, the commanding general of the Fourth Marine Division convened a Board of Inquiry to determine whether plaintiff should be separated from the Marine Corps. The convening

order instructed the board to consider two bases for separation: first, misconduct as evidenced by the commission of a civil offense; and second, substandard performance of duty as evidenced by a failure to demonstrate acceptable qualities of leadership. The Board of Inquiry held a hearing on the matter; plaintiff attended the hearing and was represented by military counsel.

The Marine Corps' evidence at the hearing included the Eden Prairie police complaint, as well as the full police record of the investigation. A key document in the government's case was a letter written by the plaintiff to the complainant in the Eden Prairie matter. The letter was addressed to the complainant and her dog, and was supposedly from the plaintiff's dog. The Eden Prairie police viewed the letter as an attempt by plaintiff to circumvent his instructions not to have contact with the complainant. In a May 1991 letter to the commanding general of

the Fourth Marine Division, plaintiff claimed that the letter was a purposefully coded phonetic letter designed to catch the complainant in her lies, and stated that he wrote the letter as part of a calculated plan to have the entire matter heard by the Marine Corps.

The Marine Corps also presented the Board of Inquiry with numerous letters from the plaintiff to high government and military officials offering opinions on foreign and internal political matters, and complaining of an alleged conspiracy against him by DIS agents. Some of the letters written by plaintiff were abusive. For example, he referred to DIS agents as "scum-sucking retromengents," and to the Eden Prairie prosecutor as a "lethargic buffalo brain." His letters also contained numerous sexual allusions.

On November 6, 1991, after considering both parties' evidence and arguments, the Board of Inquiry concluded that the

preponderance of the evidence supported a finding of substandard performance and misconduct. The board therefore recommended that plaintiff be retired from the Marine Corps Reserve in the next inferior grade of lieutenant colonel. The Secretary of the Navy approved the recommendation on February 24, 1992, noting that plaintiff did not have sufficient time in grade as a colonel to retire in that grade. On March 9, 1992, plaintiff commenced this action, alleging that the Board of Inquiry hearing did not afford him due process. He asked the Court to (1) enjoin the Secretary of the Navy and the Commandant of the Marine Corps from retiring him, (2) set-aside the decision of the Secretary of the Navy to retire him and reduce his rank, (3) restore him to his position as an active member of the Marine Corps Reserve, (4) order defendants to provide him with the standards of leadership required of him, and (5) order defendants to provide him with a new hearing. Plaintiff also filed a petition for

expungement of military records, in which he asked the Court to order defendants to remove from his records all references to the Eden Prairie police report and investigation.

Upon receiving the complaint, defendants agreed to voluntarily refrain from discharging plaintiff, so that they might reevaluate his medical condition. Defendants believed that plaintiff may have been physically or mentally disabled or suffering from a personality disorder; a finding to that effect might have entitled plaintiff to a medical retirement. The parties agreed to stay the proceedings in this action until thirty days after a PEB reevaluated plaintiff's condition and rendered a final decision. In August 1992, the PEB issued preliminary findings stating that the plaintiff was not physically qualified for duty and that he was suffering from a delusional disorder. After additional administrative proceedings, however, the president of the PEB declined to accept the preliminary findings, because there was

insufficient evidence to support a diagnosis of significant pathology. Thus, the final decision of the Navy was that plaintiff was physically qualified for active duty and was therefore ineligible for a medical discharge.

The Navy intended, upon expiration of the stay of proceedings, to execute its previous decision to retire plaintiff in the next inferior rank. Prior to that time, however, plaintiff moved for an injunction to prevent the Navy from doing so. The Court extended the stay for an additional thirty days, in order to allow time to hear plaintiff's request for injunctive relief. On March 23, 1993, the Court denied plaintiff's motion for injunctive relief, and on April 1, 1993, the Secretary of the Navy separated plaintiff from the reserve. Defendants now move to dismiss the complaint.

DISCUSSION

In reviewing a motion to dismiss for failure to state a claim the Court presumes all factual allegations to be true and all reasonable inferences from those allegations

are construed in favor of the non-moving party. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Palmer v. Tracor. Inc., 856 F. 2d 1131, 1132 (8th Cir. 1988). The appropriate inquiry is not whether plaintiff will ultimately prevail but whether he will be allowed to introduce evidence to support his claims. Scheuer, 416 U.S. at 236. Because dismissal on the pleadings is an extreme remedy it is not favored by the courts and is employed only when "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957) (footnote omitted). Robinson v. MFA Mutual Insurance Co., 629 F. 2d 497, 500 (8th Cir. 1980). See also Palmer, 856 F. 2d at 1132. In arguing for dismissal, defendants correctly note that federal courts may review discrete military personnel decisions only where a plaintiff challenges the facial constitutionality of a military statute or regulation or seeks review of a final agency

action. Wood v. United States, 968 F. 2d 738, 739-40 (8th Cir. 1992) (citing Watson v. Arkansas National Guard, 886 F. 2d 1004 (8th Cir. 1989)). In this case, plaintiff seeks review of defendants' administrative decision to retire him in the next inferior rank. However, plaintiff has failed to exhaust his administrative remedies by seeking review of defendants' decision from the Board for Correction of Naval Records (BCNR). The BCNR has authority to correct military records to remove errors or injustices. 10 U.S.C. ¶ 1552; see also Chappell v. Wallace, 462 U.S. 296, 303 (1983). The BCNR has authority to order retroactive back pay and promotion. 10 U.S.C. ¶ 1552(c). It also has authority to recommend reinstatement. Declaration of W. Dean Pfeiffer. As the Court noted in its order denying plaintiff's motion for preliminary injunction, exhaustion of administrative remedies, including an appeal to the BCNR, is a prerequisite to judicial review. Watson, 886 F. 2d at 1008. Because it appears that

plaintiff has failed to exhaust his administrative remedies regarding defendants' decision to discharge him in the next inferior rank, the Court will dismiss plaintiff's complaint insofar as he challenges that decision.

The same reasoning applies to plaintiff's request for expungement of military records. The BCNR is explicitly authorized to correct military records. Plaintiff has not, however, requested the BCNR to remove from his records references to the Eden Prairie police report and investigation. Therefore, plaintiff's petition for expungement of records will be dismissed for failure to exhaust administrative remedies.

Defendants note that in addition to challenging his discharge and requesting expungement of certain materials from his records, plaintiff has in his complaint and in affidavits submitted to this Court made repeated references to an alleged conspiracy between DIS agents and the Eden Prairie

prosecutor. Plaintiff claims that this conspiracy violated his constitutional rights. Defendants assert that to the extent that these allegations sound in tort, they are inadequate to state a claim because plaintiff has not filed an administrative claim for damages; such an administrative claim is a prerequisite to suit under the Federal Tort Claims Act. 28 U.S.C. ¶ 2675.

Defendants further argue that to the extent plaintiff asserts a direct constitutional action under Bivens v. Six Unknown Agents, 403 U.S. 388 (1971), his claim must fail because he has not sued any defendants in their individual capacities. Defendants point out that Bivens actions are available only against individual federal officials; the United States and its agencies are not proper defendants to a Bivens suit, because they enjoy sovereign immunity from such actions. Laswell v. Brown, 683 F. 2d 261, 267-68 (8th Cir. 1982), cert. denied, 459 U.S. 1210 (1983). Because plaintiff named only the

United States, United States agencies, and United States officials in their official capacity, defendant asserts that plaintiff has failed to state a claim under Bivens. In response to defendants' motion to dismiss, plaintiff concedes that his original complaint is subject to dismissal for failure to exhaust administrative remedies and failure to state a claim. However, he argues that rather than dismissing the action in its entirety, the Court should allow him to file an amended complaint. In his 95-page proposed amended complaint, plaintiff raises eighteen counts, which fall into four categories. First, plaintiff raises Bivens actions against five individual DIS agents, who allegedly interfered with plaintiff's Fourth, Fifth, and Sixth Amendment rights and his constitutional right of privacy in their investigation. Second, plaintiff raises Bivens claims against Richard Cheney, the former Secretary of Defense, and H. Lawrence Garrett, III, the former Secretary of the Navy; he alleges that

Cheney failed to adequately supervise and train DIS agents, that Garrett failed to adequately supervise and train Navy and Marine Corps personnel, and that those failures deprived plaintiff of his Fourth, Fifth, and Sixth Amendment rights and his constitutional right of privacy. Third, plaintiff claims that Assistant U.S. Attorney Robert Small and JAG Corps Attorney Alicia Connolly deprived him of his Fourth, Fifth, and Sixth Amendment rights and his constitutional right of privacy by submitting false and misleading documents in this action. Plaintiff seeks monetary damages against all of the individual defendants for his constitutional claims. Finally, plaintiff alleges that the Board of Inquiry hearing did not conform to the requirements of administrative and constitutional due process; he seeks a declaration that his retirement is invalid and an order vacating the retirement and restoring him to the rank of colonel.

Federal Rule of Civil Procedure 15(a) provides that a party may amend a pleading

once as a matter of course at any time before a responsive pleading is served; because defendants have answered plaintiff's complaint, he may amend his pleadings only by leave of court. Rule 15(a) provides that "leave shall be freely given when justice so requires." Fed.R.Civ.P. 15(a). Absent a good reason for denial -- such as undue delay, bad faith, undue prejudice to the non-moving party, or futility of amendment -- leave to amend should be granted. Thompson-El v. Jones, 876 F. 2d 66, 67 (8th Cir. 1989) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

The Court concludes that leave to amend should be denied, for several reasons. First, as the discussion above indicates, plaintiff's claim seeking judicial review of defendants' decision to retire him in the next inferior grade is barred by his failure to exhaust administrative remedies. Because amending the complaint to reassert that claim would be futile, there is no reason to allow the amendment. Second, it appears likely that an

amendment raising Bivens claims would also be futile. Under the doctrine established in Feres v. United States, 340 U.S. 135, 146 (1950), Bivens claims are nonjusticiable if they involve injuries which arose out of or were in the course of activity incident to military service. Wood v. United States, 968 F. 2d 738, 739 (8th Cir. 1992) (citing Watson v. Arkansas National Guard, 886 F. 2d 1004, 1005-08 (8th Cir. 1989)). In his amended complaint, plaintiff seeks to bring Bivens claims against various individuals who allegedly engaged in misconduct while conducting an investigation in order to determine whether plaintiff was fit to serve in the military. Actions taken in the context of such an investigation would likely be incident to military service, and therefore would not be subject to judicial review under the Feres doctrine.

Finally, plaintiff's amended complaint adds numerous new defendants, some of whom, such as Small and Connolly, had no connection

with the claims set forth in the original complaint. Plaintiff's amended complaint also substantially changes the focus of this action, which was originally a request for judicial review of an administrative decision under the Administrative Procedure Act. Where, as here, it would be inefficient and possibly confusing to add defendants and claims that are far removed from those appearing in the original complaint, leave to amend may be denied. Brown v. Wallace, 957 F. 2d 564,566 (8th Cir. 1992). Therefore, the Court will deny plaintiff's motion to amend the complaint.

In addition to requesting leave to amend his complaint, plaintiff has once again moved for imposition of sanctions under Federal Rule of Civil Procedure 11. Plaintiff moved for Rule 11 sanctions against Small and Connolly when he brought his motion for injunctive relief, alleging that Small and Connolly had submitted false and misleading documents to the Court. The Court denied plaintiff's motion

for Rule 11 sanctions, finding insufficient evidence of false and misleading submissions to warrant imposing sanctions. It appears that plaintiff bases his current Rule 11 motion on the same grounds as his previous motion; he alleges that Small and Connolly have either not provided the Court with the full administrative record, or have somehow falsified the record.

Because plaintiff has not clarified how the documents submitted by Small and Connolly are false and misleading, and because he has submitted nothing to suggest that the Court should revisit its prior ruling on his motion for sanctions, the Court will again deny plaintiff's motion for Rule 11 sanctions.

Accordingly, based on the foregoing, and upon all the files. records and proceedings herein.

IT IS ORDERED that:

1. defendant's motion to dismiss the complaint is granted;

2. plaintiff's motion for leave to amend the complaint is denied; and

3. plaintiff's motion for the imposition of Rule 11 sanctions is denied.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Judge Harry H.
MacLaughlin
United States
District Court

DATED: June 8, 1993

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DON B. FULLER

Plaintiff and Petitioner

Civil Action File
No. 4-92 Civil 233

vs.

AFFIDAVIT OF DON B. FULLER

THE SECRETARY OF DEFENSE, et al

Defendants and Respondents

AFFIDAVIT OF DON B. FULLER

STATE OF MINNESOTA

COUNTY OF HENNEPIN

NOW COMES DON B. FULLER, and for his Affidavit in this matter states as follows:

SUCCESSFUL MARINE CORPS CAREER

1. I have been a United States Marine since January 18, 1966.
2. I have attained the grade of Colonel in the United States Marine Corps Reserve.
3. I have performed my military duties consistently in an outstanding manner.

TAB A AND B

4. I am a graduate of Eastern Illinois University, The University of Illinois College of Law, The Marine Corps Basic School, the Amphibious Warfare School, the Marine Corps Institute Command and Staff College Course, the Naval War College Strategy and Policy Course, the National defense University, and the Army War College 2 year non resident course. TAB C

5. In September, 1974, I was the attorney for the Marine Corps program designed to implement the Presidential Clemency Program and upon completion of that duty I was awarded the Meritorious Service Medal. TAB D

6. From October, 1983 until December 1984, I designed numerous quality of life programs for the Family Service Program of the United States Marine Corps. TAB E and F to Exhibit 1.

7. In January, 1985, my Marine Corps legal assistance offices received the

prestigious American Bar Association award, when judged against all other services offices in the entire Department of Defense, for outstanding delivery of legal services. This was the first time ever that a Marine Corps office had been so honored. TAB G

RECENT SUCCESSES AS AN ATTORNEY

8. In March, 1988, I was honored as the alum of the month by the University of Illinois college of law. TAB H

9. During January, 1990, it was necessary for me to take the Minnesota bar examination and I demonstrated complete recovery from the effects of an auto accident.

> "Mr. Fuller demonstrated that he was exceptionally well prepared for every aspect of the bar examination. He developed superb memory skills, prepared detailed outlines and notes, and formulated the most focused and well planned approach to studying for the bar examination that I have seen in my seventeen years of helping students prepare for this exam." Shelly Singer, Executive Director, Minnesota Bar Review. Tab I

10. I have continued in the representation of my clients in an exemplary manner. Tab J and K

11. I have developed a creative mind which is capable of strategic thought and also providing innovative quality of life programs which assist the large numbers of Marines and their families through preventive law programs. Tab P, L, W, X, and Y

SUCCESSES AGAINST DIS

12. Local misguided DIS agents threatened to cause people to lose their security clearances and their jobs if they did anything to thwart the actions of DIS agents who had stated that they were going to again close Honeywell down and cost them another 30 million dollars. Tab M

12. I have demonstrated perseverance, intellectual ability to develop strategy, fortitude and boldness in thwarting a wayward DIS investigation designed to

close Honeywell down and designed to cause Honeywell to lose another 30 million dollars and to cause personal and professional harm to those who tried to stop the wayward DIS agents. Tab J

13. DIS did not get any of the promised 40 to 70 federal grand jury indictments and the entire grand jury process was stopped. Tab N and O to Exhibit 11.

SUBSTANTIAL INVESTMENT IN AND TO THE USMC

14. At every critical moment and when called I have responded to Marine Corps requests to provide valuable services to the Corps. Tab A and B

15. I put two years of concentrated study into the demanding Army War College non-resident program and attended all resident sessions which effort resulted in the following assessment.

"Well qualified for responsible positions on high level staff, but obviously could be used to his fullest capacity in commands at increasing levels of responsibility. The ability to delegate authority, accept responsibility, encourage and

support subordinates, and a powerful understanding of the force-planning process makes him an ideal candidate for service on the Joint Staff...or to the staff of the Space Command." Army War College Fitness Report dtd 27 August 1986. Tab P

16. I have an inventive and creative mind which has resulted in the development of a unique project that has been well received by the Corps.

Developed and produced the "Uncommon Valor was a Common Virtue" Video Tape at a cost of $500.00. Lt. Col. Don B. Fuller - 1 Nov 1990. Tab P and In Camera Tab AH video tape

POTENTIAL FOR FUTURE SERVICE

17. I have critically examined the major issues facing this country during the next 30 years and taken steps to recommend how the Corps can assure a continued lifeblood of quality recruits and I am recognized as having outstanding potential for continued service to the Corps.

Colonel Fuller recognized the positive impact of "Heroes" on the youth of this country and the need for positive role models and the role of the United States Marine Corps. TAB L and Q

"This letter is to strongly recommend the retention for continued duty of Lt. Col. Donald B. Fuller....From my review of his service during that time, knowledge of his determination, awareness of his physical stamina, and personal awareness of his memory and intellectual capabilities, I am of the opinion that Colonel (S) Fuller is unquestionably fit for continued duty and offers superb potential for future outstanding service to the Marine Corps." MGEN Martin L. Brandnter, USMC now serving as a Lt. General and the Director of Operations for the Joint Staff. Tab R

"Lt. Col. Fuller is the epitome of a Marine Corps officer." BGEN W. H. J. Tiernan. TAB S

"He exemplified unsurpassed loyalty and dedication to the Marine Corps. ...would recommend him for future assignments requiring the highest degree of responsibility, professional integrity and moral character." Col. Jerry D. Reece, USMCR. TAB T

"I have seldom seen such a deep and sincere motivation to be a career officer. ...He has a keen interest in and has a broad knowledge of military history, tactics and world affairs. He is bright, dynamic, and innovative. In sum, he is a model field grade Marine Corps officer. I am blessed to have such an officer on my staff. MGEN Robert E. Haebel, USMC (Ret). TAB E

"In my view, Lt. Col. Fuller is the most dedicated Marine Corps officer I have ever met - dedicated to the ideals of the Corps as well as reaching out to help his fellow Marines. ...An officer of his unique capabilities and dedication is one we can ill afford to lose." BGEN D. M. Brahms, USMC, TAB F

"Lt. Col. Fuller is an outstanding communicator, demonstrating a unique ability to provide depth, knowledge, and expertise to a wide variety of subjects both from the podium and in written form. ...Resourceful, imaginative, selfless, and unquestionably loyal are characteristics which describe this officer." Col. C. H. Furbee III, USMCR. TAB A

UNITED STATES MARINE CORPS ACTIONS THAT HARM ME

USMC failure to follow regulations, failure to provide information, threats of destruction of career, and improper information before the formal board of inquiry which have had the combined effect of denying me due process.

18. During October, 1988, I was told by two DIS agents that they were again going to close Honeywell down and cost Honeywell another 30 million dollars. TAB M

19. Since that moment in time, my life has never been the same as DIS has interfered with my privacy, my employment, my law practice and my clients, and with my military career. Tab AI and AJ

20. On July 20, 1990, DIS received an anonymous telephone tip, it has since been determined that it was the prosecuting attorney who had lied to a judge, that there was a problem in the civilian community regarding me. DIS did not know that I had carefully created the trap to lead them astray, to stop the damage they were doing to my client, and to make a public record of their wayward actions.

21. Between July 20, 1990, and July 31, 1990, DIS conducted an unauthorized investigation of me. Between July 20, 1990 and until July 19, 1991 when I fully exposed their actions to DIS headquarters, local DIS agents demonstrated diminished restraint in

their wayward actions when they thought they had something on me which, unknown to them, I had purposefully planted and set a trap.

22. On or about July 31, 1990, DIS forwarded that confidential and unauthorized first document to DIS, Washington, D.C.

23. During August, 1990, I learned that the first unauthorized report had been unlawfully and improperly disseminated within the Marine Corps to cause harm to me.

24. During September, I notified the United States Marine Corps officially that I was having problems with DIS. Tab AC

25. USMC lost that report due to administrative error and it was not included - "due to administrative error" - in the comments of the reviewing officer who decided to initiate a formal board of inquiry on me.

26. During November, 1990, the illegal report was again unlawfully disseminated to my

military records keepers to cause further harm to me.

27. During March, 1991, I was informed that there would be a formal board of inquiry conducted on me concerning the matters set forth in the illegal investigation report which gathered information in violation of my civil rights and rights against unlawful searches and seizures.

28. During April, 1991, through February 28, 1992, I continually sought but was never provided a copy of the leadership standards to which I was expected to conform. To date, those leadership standards, if they even exist, have not been tendered to me.

29. During June, 1991, I was told that DIS was going to make sure that I retired from the Marine Corps and that they were going to use a three pronged approach to separate me from the Corps with one method being the administrative hearing routine. When it was in the Corps

interest, they found ways to delay the board hearing process.

30. On September 17, 1991, I had a hearing of sorts in which I had to prove that I had lived up to the nonexistent standards of conduct expected of a Marine Corps Lieutenant Colonel while I was temporarily not physically qualified for Marine Corps duty and in the civilian community fighting off the wayward actions of DIS agents who had threatened to close Honeywell down again and cost Honeywell another 30 million dollars and who had threatened to cause irreparable harm to careers and security clearances of anyone who got in their way.

31. The senior member of the board threw his pen across the table while I was providing testimony thereby impeaching my credibility and wrongfully influencing the junior members of the board. TAB AI.

32. On September 17, 1991, a copy of the illegal and fictionalized DIS report was

made available to a member of the board of inquiry and during the day it was in plain sight in the area around the hearing room in a federal building in New Orleans, Louisiana. TAB AG

33. On September 24, 1991, to help with my appeal, I requested a copy of the illegally obtained, highly fictionalized, and unlawfully disseminated DIS report that was wrongfully in the hands of one board member and in plain view of a passage way by the formal board hearing room. TAB AF

34. On December 5, 1991, I am now told that the board findings were approved. I was not notified of the action or the process.

35. Sometime between December 5, 1991, and March 2, 1992, the board findings were reviewed and then sent to the secretary of the Navy. I was not notified of the actions or the process.

36. By January 29, 1992, I still had not received the requested illegal, highly fictionalized, and unlawfully disseminated DIS report that had been at the hearing that was not made a part of the formal record.

37. On January 31, 1992, it was necessary to contact Senator Sam Nunn, Chairman of the Senate Armed Services Committee for assistance to find out what was going on as I had received no information whatsoever. TAB AI

38. On February 20, 1992, DIS sent a letter which stated - by deduction after viewing only the 1984 material which was sent - that the August 1, 1991, illegally obtained, highly fictionalized, and wrongfully disseminated DIS report did not exist. TAB AF

39. On February 27, 1992, Senator Nunn informed me that he had contacted the Marine Corps on my behalf to get a report. TAB AK

40. On March 3, 1992, I learned that the Secretary of the Navy has executed a document which will have the effect, if not restrained and enjoined, of reducing me in grade and transferring him to the retired list. If I do not go along with the reduction, I will be discharged and lose all of my retirement benefits accrued over twenty years of honorable service and at great sacrifice to me and to my family. TAB AM

41. Prior to March 16, 1992, despite the failure to abide by DOD regulations and despite the lack of due process in conducting the formal board process, I must elect to be reduced in grade and have a retirement or to be discharged without any retirement after 20 years of honorable service. TAB AM

MY INVESTIGATION OF WAYWARD FEDERAL DIS AGENTS

42. In October, 1988, at the request of a Honeywell employee, I assisted in the investigation of why DIS Agents

"(SAMPSON") and ("BENNETT") had initiated a background investigation on Barb Henry.

43. In October, 1988, ("SAMPSON") and ("BENNETT") told me that they were going to again close Honeywell down for another 30 days and cost Honeywell another 30 million dollars.

44. My life has never been the same since hearing ("SAMPSON") and ("BENNETT") make those boasts.

45. In October, 1988, I began a requested investigation to determine and prove the innocence of another Honeywell employee who had been wrongfully investigated and consistent with the threats of ("SAMPSON") and ("BENNETT"). TAB J.

46. Reputable former DIS agents familiar with Turay and his tactics informed me that the investigation of my client had been a "witchhunt" and a "shark feeding frenzy" and that they would create substantial trouble for anyone who got in the way of their stated objective of closing

Honeywell down and costing them 30 million dollars in additional losses. TAB M and O.

47. My residence and friends became the subject of some unusual and unexplained activities which were consistent with the DIS threats and objectives.

48. Fearing for my own and my client's safety, I set a trap to catch the DIS agents, to expose their actions, and to protect others from continued and irreparable personal and professional harm. TAB O.

49. DIS agents began to interfere with my investigation at a time when I had no clearances and DIS could not lawfully investigate me, they began contacting my employers, contacting my friends and my clients, and others in an effort to exert leverage to get me to quit my investigation and to thwart the defense of my client. TAB AF.

50. DIS agents began boasting that they were going to get 40 to 70 federal indictments and hurt Honeywell. TAB M and N.

51. DIS agents, upon finding out that I had that boastful information, communicated a threat to former DIS agent Greg Bourne to try to cause him not to cooperate with me in the development of a defense to the DIS wrongful claims that could lead to indictments of innocent people. TAB M and N.

52. In July, 1991, the federal grand jury action was terminated and my client and Honeywell were notified that there would be no indictments despite the DIS promises of 40 to 70 federal indictments. TAB O.

53. I then became the target of a vicious and unauthorized and illegal DIS investigation that has crept into the process which has resulted in my being recommended for reduction to Lt. Colonel

and retired from the United States Marine Corps Reserve. TAB AG, AI, and AJ.

DEFENDANTS HAVE FAILED TO AFFORD ME CONSTITUTIONAL AND ADMINISTRATIVE DUE PROCESS WHICH WILL CAUSE ME IRREPARABLE HARM

54. The Secretary of the Navy and the Commandant of the Marine Corps have not provided me with the standards of conduct expected of a United States Marine Reserve officer serving in a non-pay billet and while not on active duty and in the performance of somewhat difficult duty in the protection of his client and others in the civilian community.

55. The Secretary of the Navy and the Commandant of the Marine Corps have held me to a nonexistent standard of leadership and required me to prove that I had met that nonexistent standard.

56. The USMC Board was not held in accordance with procedural due process.

57. Improper records and documents were considered by the board.

58. I have a "property interest" in my career and I am facing the loss of a promotion and demotion to the next inferior grade.

59. If I don't accept the reduction, despite my record of achievement, I will lose my retirement and be discharged from the United States Marine Corps Reserve.

60. I will lose 20 years of service, a pension, and my character and reputation will be destroyed as promised by the DIS agents who were intent on closing Honeywell down and costing Honeywell another 30 million dollars in losses.

61. The wayward actions of the DIS agents who illegally obtained information, who fictionalized the reports, and who illegally disseminated that information to pollute a board finding, have so interfered with the normal board functioning that I have not been provided with any semblance of due process.

USMC FAILED TO PROVIDE STANDARDS OF CONDUCT

62. The Marine Corps does not have written standards of leadership by which to judge my actions.

63. I was obliged to demonstrate that I had lived up to the nonexistent standards of leadership in order to continue to have any Marine Corps Reserve career.

64. The Marine Corps cannot use non-arrest, non-conviction, expunged material, in which all issues were decided my favor and in which DIS agents had their biased work product all over the place, to retire and discharge me with more than 20 years of otherwise honorable service.

65. The Marine Corps cannot use my civilian community actions, allegedly committed during a time when I was not physically qualified for any duty and based on my reaction to a false police report and the subsequent trap to catch DIS, to retire and discharge me with more than 20 years of otherwise honorable service.

66. The Marine Corps cannot use my successful, and necessary trap to stop wayward DIS agent's actions which were harming me, my friends, and my clients to retire and discharge me after I have more than 20 years of otherwise honorable service.

USMC FAILED TO HOLD PROPER BOARD OF INQUIRY

67. The unauthorized and illegal release of confidential and fictionalized reports into the board of inquiry hearing area has painted me in a very false light. TAB AG.

68. The senior member's actions in throwing a pen undermined my creditability and demonstrated bias and a predisposition to rule against me.

69. The failure to provide me with requested information made it impossible to prepare for the hearing and for any appeal.

70. The admitted USMC administrative error in losing exculpatory information which explained the DIS fictionalized reports

and misguided investigations painted me in a false light from the get/go.

71. The admitted DIS administrative error of not providing me with requested and exculpatory information frustrated any chance of countering the damage that DIS had done at the formal board of inquiry hearing room where the unauthorized, fictionalized, documents was wrongfully disseminated.

USMC CONSIDERATION OF IMPROPER INFORMATION

72. The Secretary of the Navy, the Commandant of the Marine Corps, the Convening Authority for the formal board of inquiry, and the board members have viewed false documents and fictionalized reports of the my conduct which have painted me in a false light and cause me to have to overcome bias and prejudging.

73. The Senior member of the board prejudged me despite his promise to remain impartial until all of the evidence was before the board.

74. Local misguided agents of DIS have fictionalized reports for years and I knew that they were attempting to do the same with me. I took action to assure that I had control of the situation which they reported. Their report of my actions, abilities, and conduct is highly fictionalized.

THE IMPACT OF DEFENDANTS' ACTIONS ON ME

75. I have been painted in a false light.

76. I have to overcome bias, prejudice, and preconceived ideas concerning my abilities, character, and reputation solely as a result of a false police report and the ensuing process and the confidential information summary reports illegally obtained by DIS agents.

77. I have been harmed and my family has been harmed by the fictionalized reporting of information, and the unauthorized dissemination into the military records and the board of inquiry process have resulted in severe infringement of

privacy; the illegal search and seizure of confidential information; and the denial of due process.

78. I have spent a lifetime of study, preparation, and overcoming obstacles so that I can be of future service to our country.

79. I will loose a valuable property interest if my status as a United States Marine is adversely changed as a result of the actions of wayward DIS agents whose stated intent it was to ruin the careers and security clearances of anyone who got in their way of trying to close Honeywell down and costing Honeywell 30 million dollars.

THE DEFENDANTS HAVE VIOLATED MY CIVIL RIGHTS

80. The Department of Defense is the employer of the Secretary of the Navy, the Commandant of the Marine Corps, and the employees of the Defense Investigative Service.

81. The Department of Defense either directed or permitted or failed to stop illegal investigations on me, failed to stop fictionalized report on me, and failed to exercise proper controls over highly confidential and offensive reports on me which were wholly inconsistent with the statements of all the other witnesses. TAB AI and AJ.

82. Defense Investigative Service employees of DOD, began a cover-up of their actions after divulging that they were going to close Honeywell down. TAB M and N.

83. Defense Investigative Service employees of DOD intentionally invaded my privacy and set upon a course to cause me considerable harm. TAB AD and AG.

84. Defense Investigative Service employees of DOD intentionally set out to destroy my character, reputation, and military career.

I WILL BE IMMEDIATELY AND IRREPARABLY HARMED IF PRELIMINARY RELIEF IS NOT GRANTED

85. Senator Nunn has asked for a report from the Marine Corps. TAB AK.

86. I am in a non-pay, non-drilling status.

87. If I am reduced in grade based on this process which was perverted by DIS, I will be irreparably harmed.

88. If I am retired based on this process which was perverted by DIS, I will be irreparably harmed.

89. If I am discharged without retirement pay based on this process which was perverted by DIS, I will be irreparably harmed.

90. DIS threatened to see to it that I was retired and that my career was ruined because I interfered with their stated intent of closing Honeywell down again and costing Honeywell another 30 million dollars.

91. The unclean hands of DIS have tainted the process, denied me of a fair and impartial hearing, and threaten to cause me irreparable harm.

BALANCING OF THE EQUITIES

92. DIS has violated my Constitutional rights and set out upon a course to have me retired from the Marine Corps since I heard DIS agents say that they were going to close Honeywell down.

93. My record, except for an alleged harassing letter, designed to trap DIS agents is exemplary. TABS A THRU L, P THRU Z.

94. All matters concerning the false police report and the ensuing process have been decided in my favor and the record has been ordered expunged. TAB AN.

95. The Marine corps lost the initial exculpatory letter informing them that I was experiencing problems with DIS but then sent on all of the information to start the board process. TAB AC.

96. The Marine Corps could never furnish the standards of leadership to which I was held accountable and had to demonstrate that I had conformed while defending

myself against unauthorized DIS actions. TAB AI.

97. DIS compiled two unauthorized and fictionalized reports on me and then unlawfully disseminated them to at least one member of the formal board hearing which recommended my retirement and reduction in grade. TAB AG, AI, AND AJ.

98. I took an exculpatory polygraph to demonstrate the initial police report was false and that I was proceeding in good faith. TAB AN.

99. DIS did not provide me with requested information for 5 critical months due to administrative error at a time when I needed the information to protect the record. TAB AD THRU AF.

100. For twenty years of my life, I have studied and prepared for leadership positions in the Marine Corps from which to lead Marines, assist and support Marines and their families, protect the country, and provide cost effective

results for the United States Government and the United States Marine Corps. TABS A thru I and P thru A.

101. To reduce, retire, or discharge me before I can have the requested information is a further abuse of my Constitutional right to property and a denial of due process.

102. The Marine Corps has invested considerable time and money in assuring that I am well educated, effective, and capable of assisting Marines, their families, and the Corps to fulfill its responsibilities to the country and the taxpayers. TAB P, R, W AND X.

103. My client and I were the only ones capable of standing up to wayward DIS agents and as a result, Honeywell was not closed again and Honeywell did not lose another 30 million dollars. TAB J.

104. I produced the "Uncommon Valor was a Common Virtue" video tape at a cost of $500.00 whereas I am told that similar

projects for the Marine Corps run into six figure costs. TAB Q and AH.

105. There is no harm to the Marine Corps or the United States government from my continued service pending the USMC report to Senator Nunn as I am in a non-pay status, not drilling, and continuing my education to be better qualified for future leadership positions.

106. The harm to me is immediate, irreparable, and diminishes my creditability and reputation and ability to testify against the wayward DIS agents. TABS AI thru AL.

PUBLIC INTEREST FAVORS PRELIMINARY RELIEF

107. The harm to the taxpayer and the defense industry is great if my character and reputation and ability to testify against the wayward DIS agents is diminished.

108. In times of tightened budgets, unstable world conditions, and reduced manpower mandates, the United States Government and the taxpayers will lose from my

premature retirement, reduction, and discharge.

109. In times of tightened budgets, unstable world conditions, and reduced manpower mandates it is essential to weed out the right people and I am one who has earned the right to continued service to the Corps and my country.

110. In less than a morning, I have favorably resolved problems that have taken an organization an entire week to fail to resolve. TAB U.

111. In times of budget constraints and uncertainties facing the armed services, the taxpayers of the United States will demand Marine leaders who can cut through the bureaucracy and provide valuable services in a cost effective manner.

> "To describe Colonel Fuller as a great leader would be an understatement. In addition to the quality of standards he exemplified, he was a leader that was genuinely concerned with this troops and <u>always</u> went that "extra mile". . . .I spent an entire week attempting to get paid with assistance of my

parent command (LSSS), to no avail. ...He, (Col. Fuller), immediately arranged to obtain authorization...this was all accomplished in one morning after a solid week of rejection. It is difficult to convey my true appreciation for Colonel Fuller's leadership, but he truly is among the best." Sgt. Roxanne L. Roberts, USMC. TAB U.

"He impressed me as being an outstanding professional officer. I especially liked the way that he followed up on matters when they appeared to be bogged down in a bureaucratic bottleneck." MGen B. H. Pochyla, U.S. Army (Ret.) TAB V.

112. I am asking that there be some sense of balance in this process, that the Secretary of the Navy and the Commandant of the Marine Corps conform with their own regulations, that they afford me a hearing which conforms with due process, and that the board members only consider those matters appropriately before them, and that the DIS agents be restrained from interfering with the normal hearing process, refrain from fictionalizing reports, and refrain from the illegal dissemination of reports. TAB *

113. As a result of professional responsibilities and a pledge to my client, I stood alone and with him to stop the wayward actions of a few misguided federal officers intent on wrongfully closing Honeywell down and costing Honeywell another 30 million dollars.

114. I am in a non-pay status and have not drawn a regular reserve drilling paycheck from the United States Marine Corps Reserve since 1982.

115. Given my track record of accomplishments, Marines and their families and the taxpayers of the United States will benefit from my continued and cost effective service. TABS

116. The Secretary of the Navy should wait a little bit. I want the Commandant of the Marine Corps to respond to Senator Nunn's request for the report. I want administrative due process and to be provided with requested information and I

want a hearing which only considers evidence properly before the board. It would be nice to have board members with some degree of administrative temperament and balance.

117. There are many fictionalized reports that have been written by DIS agent Bob Turay which are causing continued and irreparable harm to many people. TAB M.

118. Given the evidence of alleged white collar crime by DIS agents in violation of 18 USC 1001, harassment by DIS agents of defense industry workers in the workplace, and the attempts to close and injure a defense contractor through its employees, this matter is in the public interest.

PROBABILITY OF SUCCESS

119. I have prepared a Petition for expungement of my records held by the United States Marine Corps because they contain evidence of a false police report upon which there was no arrest, I

provided a timely exculpatory polygraph demonstrating there was no deception is saying the police report was false, all issues in that matter have been resolved in my favor, and the State court has Ordered the record expunged.

120. Solely on the basis of that false police report the Marine Corps did, without also forwarding the letter of notice that DIS was causing me considerable problems, initiate a formal board of inquiry.

121. As a result of the false police report and the illegally created and fictionalized report which was not formally before the board of inquiry, the board did makes its recommendation to retire me and reduce me in grade.

122. I am entitled to have the record expunged as there is a Constitutional right to privacy which has been severely invaded and eroded.

123. The verified Complaint filed herein sets forth sufficient factual basis for the

issuance of a permanent injunction, ordering the Marine Corps and the Department of the Navy to produce leadership standards and to conform with their own regulations and the United States Constitution to assure procedural due process.

124. The verified Complaint filed herein sets forth sufficient facts for a determination to be made the process afforded to Plaintiff did not conform to the requirements for procedural due process.

FURTHER, YOUR AFFIANT SAYETH NOT.

Dated: March 11, 1992.

_____
Don B. Fuller

This Affidavit contains Tabs A thru Z and AA thru AP.

Subscribed to and sworn
before me this _____
day of March, 1992.

_____
Notary Public

APPENDIX D

AFFIDAVIT OF GARY FISH

STATE OF MINNESOTA
COUNTY OF HENNEPIN

NOW COMES YOUR AFFIANT, Gary Fish and after being sworn states as follows:

1. That I have worked closely with Don Fuller on Marine matters since September, 1989. I served in the Marine Corps and am a combat veteran. I have attained an MBA and am actively involved in the computer industry.

2. I have observed in Don Fuller a man of extraordinary intensity, vision, and ability to get results.

3. Don Fuller has been a houseguest and he has been actively involved in some of the Scouting programs which I initiated and he sponsored through the local family council.

4. I am familiar with the requirements for being a senior officer in the United States Marine Corps and I have always found Don Fuller to be quite able to

perform the duties of a Marine Corps Officer at any level.

5. Don Fuller possesses a high degree of tact and diplomacy and he is able to provide exceptional attorney representation to his clients.

6. I am personally aware of the great struggle that Don Fuller had to endure in order to sit through the bar examination in Minnesota during February, 1990, and I know that the director of the bar preparation course called Don Fuller's approach to the study for the bar examination the most focused in Minnesota in 17 years.

THE DIS EPISODE CONCERNING DON FULLER IS OVER

7. I know that Don Fuller always kept the DIS harassment of his clients in perspective and that Don Fuller only reported facts as they were related to him by his clients.

8. That I am aware that Don Fuller has won all of the cases involving individuals who were being investigated by DIS.

9. That I am aware that DIS continually boasted that they were going to get between 40 and 70 indictments but as a result of the investigation by Don Fuller - there were no indictments and in fact the grand jury process was halted and a letter was issued from the United States Attorney stating that there would be no indictments of the clients Don Fuller was representing.

10. That I have become aware that DIS routinely started illegal investigations just to harass and abuse defense contractor employees in the Twin Cities.

11. I have been informed by local credible witnesses that DIS targeted Don Fuller just because he was effectively representing his clients and drawing attention to the DIS abuses.

12. That I am also aware that Don Fuller heard Defense Investigative Service Agents Lee Sampson and Brad Bennett state that DIS was going to close Honeywell down again and cost Honeywell another 30 million dollars.

13. That I was informed that DIS issued a threat to a former DIS agent, Greg Bourne, that it Greg Bourne continued to cooperate with Don Fuller in the investigation designed to protect Don Fuller's clients from grand jury indictment. I understand that it is a crime to interfere with an obstruct justice even though it was being done by DIS agents.

14. That I have read Greg Bourne's statement and know that he received the threat of personal and or professional harm from a DIS agent and that former DIS agent Greg Bourne still worries about retaliation from DIS.

15. That I have been told that solely because Don Fuller represented clients being investigated by DIS did Don Fuller become the target of unusual and illegal interest by DIS.

16. I know that DIS agents intentionally tried to and did interfere with the attorney client relationship existing between Don Fuller and his clients.

17. I have been told by credible witnesses who were familiar with DIS that DIS intended to see Don Fuller retired from the United States Marine Corps and that they were going to include the physical disability and mental disability process to force Don Fuller from the Corps so that he would give up on the investigation of DIS.

18. I have personal knowledge that Don Fuller purposely and unselfishly put his Marine Corps career at risk so that DIS would then concentrate on Don Fuller and so that his clients were granted some ere

would be emotional relief as the DIS agents focused on Don Fuller's clients and began to leave Don Fuller's clients alone. I know that Don Fuller purposely decided to become the lightening rod and absorb the harassment DIS intended instead for his clients.

19. I am aware that even despite Don Fuller's efforts, one of his clients still urinates blood as a result of the stress and strain which was put on him by the DIS investigation.

DIS AGENT LEE SAMPSON

20. That during the course of events, I was informed by an Army PSYOPS unit sergeant major and others in that same unit that there were continuing investigations concerning the misconduct of Army Reserve Captain/DIS Agent Lee Sampson which concerned criminal misconduct by Lee Sampson before and during the Persian Gulf crisis.

21. That I am aware that Don Fuller had an attorney responsibility and a responsibility as an officer of the Marine Corps to turn in information concerning the illegal and criminal actions of DIS agent Lee Sampson.

22. That I know that when the required reports were made, Don Fuller suffered more retaliation from DIS.

23. That during the early part of the summer of 1991, I was informed by Tom Boland that the Defense Investigative Service intended to see to it that Don Fuller was retired from the United States Marine Corps Reserve.

24. That I was informed that the method which the Defense Investigative Service intended to use to cause Don Fuller to be separated from the Marine Corps was three fold and included the administrative separation process.

25. I know that the first two methods chosen by DIS to separate Don Fuller from the Marine Corps failed.

DON FULLER RESPONSE

26. Don Fuller has kept me informed of the process leading up to this hearing and I have met with him on a weekly basis during the entire course of this matter.

27. At all times I have observed Don Fuller actively providing a defense for his clients and protecting them from any DIS abuse, I have observed Don Fuller living a full and complete life and contributing to the community, and I have observed Don Fuller keeping all things in perspective.

28. DIS simply singled Don Fuller out for professional and personal harm because he was an effective attorney who was frustrating the confirmed DIS illegal desire to try to indict innocent people in the Twin Cities.

29. I have watched Don Fuller react to each form of DIS retaliation which has been

directed toward him and I have seen him "stand tall" and represent strong moral courage and unbelievable dedication to his Country and Corps with one of the purposes being that no other person ever has to endure such an excoriating experience.

30. In February 1989, I am aware and was informed that Don Fuller's life was threatened by Army Reserve Major Gary Talbot who shares office space with Don Fuller. I know that Gary Talbot told Don Fuller that he did not know who he was messing with and that they would see him killed.

31. I know that Gary Talbot told Don Fuller that if he did not back off of the investigation of the DIS agents and the involvement of the local Army Reserve PSYOP officers in the illegal import/export of arms, that he would be snippered as he sat in his office.

NOT AN ISOLATED CASE

32. During the course of this whole matter, I was told by knowledgeable people other than Don Fuller that it was best that I back out of the matter since it could involve harm to me and to my family.

33. Rather than back out, I became incensed and worked even harder to provide information and to get to the truth.

34. I am aware that Great Lakes Naval personnel have called Don Fuller delusional about the actions of DIS.

35. I have had a phone conversation with Charlie Harmon in Senators Nunn's office and he has informed me that Don Fuller's case is not unique that these cases are popping all around the country, that this is a systemic problem, and that the lid is going to blow off of this thing.

36. I am personally familiar with the cases of Jeff Soholt and Barb Henry who were the first clients of Don Fuller and I know that simply because Don Fuller was representing them and exposing the DIS

wrongdoing did DIS target Don Fuller for harm.

37. I am familiar with the case of Orlando Helicopter and Fred Clark in Orlando Florida and John Cotterham in Huntsville, Alabama and believe that together there are approximately 300 people now out of work and two businesses closed due to DIS/DCIS official and/or criminal misconduct.

38. I am familiar with the case of Theodore Postal in Boston, the Patriot Missile critique who stated that he received a high level of official abuse from DIS/DCIS. I know that the Boston regional director of DIS has been removed and that the DCIS agent in Orlando, Florida is now gone, and that the DIS Field Chief in Minneapolis and some of his misguided subordinates have also left DIS.

39. Much of the information which is stated herein was gathered through personal

observation, interviews with Congressional staff officials, and also much of it is now in the public domain as a result of the Dan Rather inquiry, the U. S. News and World Report articles, and the Space and Aviation.

DON FULLER'S STRONG WILL AND FITNESS FOR CONTINUED SERVICE

40. I have not witnessed one element or indication of physical or emotional weakness of Don Fuller during this entire episode.

41. I have seen in Don Fuller a Marine Corps officer of exceptional ability, an officer who would give up his career so that his clients were protected, and an officer who would give up his live for others.

42. To me, Don Fuller demonstrates that moral and personal courage which we enlisted Marines look for in our Marine officers.

43. As a combat veteran, I know for certain that I would want Don Fuller to lead me

in combat and I would trust members of my family to him if they too were headed to combat.

FURTHER, your affiant sayeth not. Dated December _____, 1992.

_____
Gary Fish

Subscribed to and sworn before me this _____ day of December, 1992.

_____
Notary Public

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

DON B. FULLER

Plaintiff and Petitioner

vs.

THE SECRETARY OF DEFENSE OF THE UNITED STATES; et al

Defendants and Respondents

AFFIDAVIT OF JEFFREY D. SOHOLT

STATE OF MINNESOTA
COUNTY OF HENNEPIN

JEFFREY D. SOHOLT, after being duly sworn, deposes and says for his Affidavit in the above referenced matter:

1. I became acquainted with Don Fuller in October, 1988 after referral from a trusted co-worker.

2. I entrusted Mr. Fuller with my reputation, career and as my representative in a matter involving a Defense Investigative Service investigation over matters in which all issues have been resolved in my favor.

3. My first impressions, substantiated by continued observation over the past 3 years, was that Mr. Fuller is intelligent, articulate, obviously calculated, with high moral standards and a man who demonstrates definite organizational skills.

4. Members of the Defense Investigative Service used methods inconsistent with Constitutional safeguards, tactics designed to intimidate me, and they caused me to temporarily have my security clearances revoked, and they did things to threaten my job and career.

5. Early on in the course of the representation, I asked Mr. Fuller if he was aware of what I considered to be the potential for his personal risk in representing me.

6. I asked Mr. Fuller if I could count on him or the duration of the process to clear me of all allegations and to

restore my security clearances and my good standing with my employer.

7. Mr. Fuller positively stated tat I could count on him. His response was neither boastful nor meaningless talk. He said he was aware of the risks.

8. Mr. Fuller proceeded to systematically review my situation, investigate related items, formulate my case strategy, identify and incorporate additional legal resources when required, and finally after more than three years and countless setbacks, managed my case to a successful conclusion on multiple fronts simultaneously.

9. DIS had told me that I wold not come out of this process since I could not afford to hire an attorney to fight back and that made too much money to rate a public defender.

10. I am informed and believe that a DIS agent had told a person cooperating with Mr. Fuller that DIS was going to obtain

40 to 70 indictments in their investigation. To date they have obtained none.

11. I am informed and believe that DIS agent Olson threatened former DIS agent Greg Bourne with harm if he continued to cooperate with Mr. Fuller in his investigation to prepare a defense and to provide information to the U. S. Attorney involved in the grand jury process.

12. As a management level security professional in a Fortune 100 company, I frequently have the opportunity to deal with people of high intelligence and high character.

13. I find Mr, Fuller's intelligence and character of the highest standards, and his perseverance unmatched.

14. Mr. Fuller has been a cornerstone for me during this process.

15. Mr. Fuller was able to provide me emotional shelter while I was enduring a very unusual DIS investigation.

16. DIS agents contacted me to try to gain personal information about Mr, Fuller at a time that they were investigating me.

17. DIS agents while investigating me, began in investigation on Mr. Fuller.

18. Since October, 1988, I began meeting with Mr. Fuller daily, then weekly, and recently approximately every other week. I have always found him to be the pinnacle both intellectually and ethically.

19. Donald Fuller held my future in his hands for three years with my continued consent.

20. I would entrust Mr. Fuller, without any reservation, in any matter of utmost importance to me personally, and will enthusiastically recommend him to others of high character.

FURTHER YOUR AFFIANT SAETH NOT.

_____
Jeffrey D. Soholt

Subscribed and sworn to before me this _____ day of March, 1992.

_____ Notary Public

APPENDIX F

AFFIDAVIT OF FRED P. CLARK

STATE OF FLORIDA

CITY OF ORLANDO

NOW COMES YOUR AFFIANT, Fred P. Clark and after being sworn states as follows:

1. That I am the Founder, Owner and President of Orlando Helicopter Airways, Inc.
2. That I have been in business for 28 years.
3. That as a result of an abusive and harassing investigation which began when a whistleblower contacted DCIS, Orlando Helicopter Airways, Inc. has now ceased doing business.
4. That during the course of the process we underwent 9 separate investigations.
5. That during the course of the investigation a DCIS agent illegally impersonated a FBI agent and did many other illegal actions which I documented and set forth in an article in Aviation

Week and Space Technology of March 2, 1992. Exhibit 1.

6. That during the course of the investigation, our family home was illegally surveilled and I took pictures of the van and the individual. Exhibit 2.

7. That as a result of contacts with Don Fuller, he informed me how to go about the process of asking that the U. S. Attorney issue a formal letter stating that there would be no prosecution.

8. I am informed that the issuance of a formal letter from the U. S. Attorney's office is a seldom done procedure and that Don Fuller's client and Orlando Helicopter Airways, Inc. are the only individuals and or companies to receive such a formal declaration of no further prosecutorial process.

9. The plight of Orlando Helicopter Airways, Inc. was shown on Dan Rather, CBS News on July 9, 1992. Exhibit 3. Videotape.

MINNEAPOLIS SITUATION

10. After first talking with Don Fuller, I contacted two former DIS agents, Lee Harriman and Greg Bourne on March 17, 1992, Both men were still concerned that they might suffer retaliation from DIS.

11. Both former DIS employees substantiated that DIS Field Chief Bob Turay had changed the professional defense contractor landscape upon his arrival in the Twin Cities and that certain companies and or individuals were purposefully targeted for investigation with Turay's guidance to "find something".

12. Both former DIS employees stated that Don Fuller had been through a lot in representing his clients and that he had been resisting all DIS attempts to gain leverage.

13. Bruce Harriman was personally knowledgeable that Minneapolis defense contractor employees were illegally

investigated by DIS and such illegal actions included illegal surveillance, people being followed, and that reports were intentionally fabricated to support the DIS case.

14. Bruce Harriman stated that the reports by Fuller that windows were broken and that cigarette piles were left by his windows are absolutely true and consistent with what the others were suffering in Minneapolis.

15. Bruce Harriman had not wanted to move from the Twin Cities but he feared for his professional career as he personally knew that Bob Turay had destroyed many lives and careers.

16. Bruce Harriman related to me that one woman defense contractor employee lost her baby one day after a "tongue lashing" by Bob Turay.

17. Bruce Harriman stated that he believed that Don Fuller's client, Jeff Soholt had

aged about 15 years in the year years that he was a victim in this DIS ordeal.

18. Bruce Harriman stated that DIS Field Chief and others had committed crimes that they had not had to yet pay for and that the heavy harassment began in the Twin Cities during the summer of 1987. Bruce Harriman stated that it had really heated up during June and July 1988.

19. Greg Bourne stated that DIS can and will create things that did not happen. When Greg Bourne left DIS in 1988 things really got bad and there were some very odd and strange things that happened at DIS and to people.

20. I remain deeply concerned that DIS and or DCIS can begin a process and target a company or individual and then commit crimes during the investigation process of such a nature that a company like mine and a career like Don Fullers are so badly hurt.

21. It takes a great deal of moral courage, financial resources, and determination to stand up to such an organized abusive process.

22. I have talked with Don Fuller on numerous occasions since March, 1992 and I have come to know that he has effectively spared his clients from any indictment and that the abusive techniques described by former DIS agents Harrimana and Bourne and Harriman and attributed to DIS Field Chief Bob Turay have ceased.

23. I have been informed that DIS Field Chief Bob Turay is no longer employed by DIS.

FURTHER YOUR AFFIANT SAYETH NOT. Dated this _____ day of December, 1992.

_____
Fred P. Clark

Subscribed to and sworn before me this ____day of December, 1992.

_____
Notary Public

APPENDIX G

UNIFORM CODE OF MILITARY JUSTICE

10 USC 801

Article 134 - The General Article

Though not specifically mentioned in this chapter [10 USC 801 et seq], all disorders and neglects to the prejudice of the good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this chapter [10 USC 801] may be guilty, shall be taken cognizance of by a general, special, or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court.

APPENDIX H

SECNAVINST 1920.6A

Administrative Separation of Officers

Definition:

Board of Inquiry. A board convened to receive evidence and make findings and recommendations as to separation for cause and characterization of service under this instruction in the case of an officer.

Policy Governing Involuntary Separation.

1 a. **Substandard Performance of Duty**. Inability of an officer to maintain adequate levels of performance or conduct as evidenced by one or more of the following:

(1). Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

1 b. **Misconduct**. Performance or personal or professional conduct which is unbecoming an officer as evidenced by one or more of the following reasons:

(1) Commission of a military or civilian offense which, if prosecuted under the UCMJ, could be punished by confinement of six months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction.

APPENDIX I

MARCORPSEPMAN

MCO P 1900.16

Administrative Separation of Officers For Cause

Definition:

Board of Inquiry. A board convened pursuant to paragraph 4302 to receive evidence and make findings and recommendations as to whether an officer who is required to show cause for retention on active duty should be retained on active duty.

Policy Governing Involuntary Separation.

4103 1. **Substandard Performance of Duty**. Inability of an officer to maintain adequate levels of performance or conduct as evidenced by one or more of the following:

4103 1 a. Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

4103 2. **Misconduct**. Performance, personal or professional conduct which is unbecoming an officer as evidenced by one more of the following reasons:

4103 2 1. Commission of a military or civilian offense which, if prosecuted under the UCMJ, could be punished by confinement of six months or more, and any other misconduct which, if prosecuted under the UCMJ, would require specific intent for conviction.

APPENDIX J

Appendix J Contains a Request for Admissions Served on AUSA Robert Small to be Answered by Admiral Frank Kelso who was then Acting Secretary of the Navy. Requests for Admissions Were Also Prepared for the Commandant of the Marine Corps and The Secretary of Defense.

The Requests Contained Admissions that AUSA Robert Small and Navy Lieutenant Alicia Connolly had Submitted False and Misleading Personnel and Medical Records to the United States District Court.

Robert Small and Alicia Connolly Moved for a Protective Order to Stop Discovery.

The District Court Judge Saw Nothing Wrong with the Actions of the AUSA or the Navy Lawyer.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION

DON B. FULLER

Plaintiff and Petitioner

Civil Action 4-92-233

vs.

PETITIONERS
REQUEST FOR ADMISSIONS
SERVED ON THE
SECRETARY OF THE NAVY
ON MARCH 25, 1993.

THE SECRETARY OF DEFENSE, et al

Defendants and Respondents

REQUEST FOR ADMISSIONS

TO: THE SECRETARY OF THE NAVY, c/o his/her Attorney, Mr. Robert Small, Assistant United States Attorney, Room 234, United States Courthouse, 110 South Fourth Street, Minneapolis, Minnesota 55401.

PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 36, you are requested to admit the truthfulness of the following matters.

Unless you serve upon the Petitioner your answers to the request for admissions within

30 days after service upon you of the request, then each such matter is taken as admitted.

If objection is made, the reasons therefore shall be stated.

Mr. Secretary, you are requested to admit the following:

REQUEST FOR ADMISSIONS OF THE SECRETARY OF THE NAVY

1. That you are the Secretary of the United States Navy.
2. That you have reviewed the Tailhook Investigation Report.
3. That you are not releasing to the public the Tailhook Investigation Report.
4. That the Tailhook Investigation report is critical of your conduct as Chief of Naval Operations.
5. That the Tailhook Investigation report is critical of your actions in obstructing the Tailhook investigation.
6. That you are concerned that the release of the Tailhook investigation would adversely affect the budget process by

which the United States Navy obtains funds for its operation.

7. That the Tailhook Investigation implicates the former Judge Advocate General of the Navy in the cover-up of Tailhook.

8. That the Tailhook Investigation implicates the former Director of the Naval Investigation Service in the cover-up of Tailhook.

9. That more than 5 Navy Admirals are implicated in the cover-up of Tailhook.

10. That Tailhook occurred in a civilian community and not on Navy Department or United States Government Property.

11. That Tailhook occurred during off-duty hours.

12. That Tailhook was not an officially sponsored Navy Department function.

13. That your own actions, if any, <u>in the Tailhook cover-up</u> took place while you were acting in an official capacity.

14. That the actions of any Navy Admirals involved in the Tailhook cover-up occurred while they were acting in their official capacities.

15. That you took no action to discharge yourself as a result of your actions in covering-up Tailhook.

16. That you have taken no action to discharge each and all of the Navy Admirals involved in the Tailhook cover-up.

17. That a former Secretary of the Navy was H. L. Garrett III.

18. That H. L. Garrett III was at the Tailhook incident and plucked beer.

19. That H. L. Garrett III initially failed to properly report that he was at Tailhook.

20. That H. L. Garrett III committed and or witnessed an act of sodomy at Tailhook as follows:

20A. witnessed sodomy before beer plucking.

20B. witnessed sodomy after beer plucking.

20C. witnessed sodomy at any time while the Secretary of the Navy was at Tailhook.

20D. H. L. Garrett III committed an act of sodomy before beer plucking.

20E. H. L. Garrett III committed an act of sodomy after beer plucking.

20F. H. L. Garrett III committed an act of sodomy at any time while the Secretary of the Navy was at Tailhook.

21. That you cannot determine whether H. L. Garrett III is telling the truth about whether the former Secretary did or did not sodomize or witness sodomy at Tailhook.

22. That H. L. Garrett III was the Secretary of the Navy at the time that the Office of the Secretary of the Navy made the determination to discharge Marine Colonel Don Fuller in February, 1992.

23. At the time that the Secretary of the Navy made the decision to discharge Marine Colonel Don Fuller, The Secretary of the Navy had not properly reported

that H. L. Garrett III was at Tailhook, that H. L. Garrett had beer plucked, and whether H. L. Garrett III had knowledge of sodomy at Tailhook.

24. That you maintain the official medical records of Marine Colonel Don B. Fuller.

25. That the medical records of Marine Colonel Don B. Fuller state that Marine Colonel Don B. Fuller was not physically qualified for duty as a United States Marine during each of the following months, in 1988 (March through December); in 1989 (from July though December); in 1990 from (March through October 30); in 1992 (from March through December 15, 1992).

26. That Marine Lieutenant Colonel Don B. Fuller was found physically qualified for duty by a physical evaluation board on October 30, 1990.

27. That Marine Colonel Don B. Fuller was found physically qualified for duty by a

physical evaluation board on December 15, 1992.

28. That Marine Colonel Don B. Fuller submitted a rebuttal to a Summer of 1992, Great Lakes medical board finding of not qualified for duty.

29. That you have a copy of the medical board rebuttal submitted to the Commanding Officer, Great Lakes Naval Hospital during August, 1992.

30. That you have the complete records submitted to the physical disability hearing board on December 15, 1992.

31. That you have the complete findings, including the enclosure, of the physical evaluation hearing board on December 15, 1992.

32. That Navy Lieutenant Alicia Connolly, JAG, is an active duty Naval Officer.

33. That Navy Lieutenant Alicia Connolly, JAG, submitted documents to the United States District Court of the District of Minnesota on March 3, 1993, which did not

include the full and complete medical records and reports of Marine Colonel Don B. Fuller.

34. That Navy Lieutenant Alicia Connolly, JAG, submitted documents to the United States District Court of the District of Minnesota on March 3, 1993, which did not include the full and complete medical records from the Navy Physical Evaluation Hearing Board of December 15, 1992.

35. That Navy Lieutenant Alicia Connolly, JAG, has professional malpractice insurance coverage.

36. That Navy Lieutenant Alicia Connolly, JAG is a licensed attorney in the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North

Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming and the District of Columbia.

37. That the official military records of Marine Colonel Don B. Fuller as maintained by the United States Marine Corps set forth a period of active duty service in which Don Fuller served on active duty with the United States Marine Corps from at least October 15, 1983 until September 30, 1986.

38. That the military records of Marine Colonel Don B. Fuller which were submitted to a United States District Court for the District of Minnesota on March 3, 1993, did not contain any reference to the active duty served by Marine Colonel Don B. Fuller for the period of at least October 15, 1983 until September 30, 1986.

39. That the Department of the Navy has copies of a Confidential ("DIS") report July 31, 1990 and numbered (90208-DL1-3230-2A1).

40. That the Confidential ("DIS") report July 31, 1990 and numbered (90208-DL1-3230-2A1) was obtained without any authorization from Marine Colonel Don B. Fuller.

41. That the Confidential ("DIS") report July 31, 1990 and numbered (90208-DL1-3230-2A1) was obtained at a time when Don Fuller did not have any government granted security clearance and at a time that Don Fuller was not physically qualified for duty as a United States Marine.

42. That the Confidential ("DIS") report July 31, 1990 and numbered (90208-DL1-3230-2A1) was obtained at a time when Don Fuller had not initiated any request to have a clearance or to have a clearance updated.

43. That the Department of the Navy has copies of a Confidential ("DIS") report ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991.

44. That the Confidential ("DIS") report ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991. was obtained <u>without any authorization</u> from Marine Colonel Don B. Fuller.

45. That the Confidential ("DIS") report ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991. was obtained at a time when Don Fuller did not have any government granted security clearance.

46. That the Confidential ("DIS") report ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991 was obtained at a time when Don Fuller had not initiated any request to have a clearance or to have a clearance updated.

47. That Confidential ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991 was made available to at least one member

of the formal board of inquiry in a federal building in New Orleans, Louisiana on September 17, 1991, prior to the board voting to recommend retirement for Marine Colonel Don Fuller from the United States Marine Corps Reserve.

48. That Confidential ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991 was made available to Captain Collins a member of the formal board of inquiry in a federal building in New Orleans, Louisiana on or before September 17, 1991, and prior to the board voting to recommend retirement for Marine Colonel Don Fuller from the United States Marine Corps Reserve.

49. That Don Fuller has reported to the Secretary of the Navy that on September 17, 1991, in New Orleans, Louisiana, that Don Fuller found an inflammatory, untrue written summary of misguided misrepresentations of Judith K. Dutcher in a public building out in the open and

in plain view of Don Fuller's colleagues, attorneys, and administrative discharge board members.

50. That Don Fuller has objected to the administrative discharge hearing board process leading up the September 17, 1991, hearing in New Orleans, Louisiana for at least the following reasons.

50A. Don Fuller, despite repeated requests, was not provided with the standards of leadership and standards by which his conduct could be measured.

50B. Don Fuller has complained that he had to prove that his conduct lived up to a nonexistent standard and or a higher standard than those still on active duty and who were involved in the Tailhook incident and its cover-up.

50C. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the Secretary of the Navy who was at Tailhook and the present Secretary of the Navy, the former CNO Kelso.

50D. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the Secretary of the Navy who plucked beer at Tailhook.

50E. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the Secretary of the Navy who failed to report his knowledge of the extent of sodomy at Tailhook.

50F. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the former and present Secretary of the Navy who have cover-ed up and still continue to cover-up Tailhook.

50G. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the Secretary of the Navy who still will not release the Tailhook investigation

50H. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the Secretary of the Navy whose actions as CNO are reported as deficient in the Tailhook investigation.

50I. Don Fuller has complained to the Secretary of the Navy that he has been held to a higher standard of leadership than the JAG of the Navy who was permitted to retire with full benefits despite his official criminal actions in the cover-up of the Tailhook investigation and obstruction of justice.

51. That, in practice, the Secretary of the Navy has a different standard of conduct

by which he judges regular and reserve officers of the Naval Service and or the Marine Corps.

52. That the Secretary of the Navy holds Reserve Marine Colonels to a higher standard of conduct than he holds himself.

53. That the Secretary of the Navy holds Reserve Marine Colonels to a higher standard of conduct than he holds active duty Navy Captains and Marine Colonels.

54. That the Secretary of the Navy holds Reserve Marine Colonels to a higher standard of conduct than he holds active duty Navy Admirals and Marine Generals.

55. That administrative discharge board results for the September 17, 1991, hearing for Marine Colonel Don Fuller contain no arrest record, no conviction, and a civilian record upon <u>which all issues were resolved in favor of Don B. Fuller</u>.

56. That Don Fuller has objected to the administrative discharge process of the United States Navy and its Marine Corps for the following reasons:

56A. Don Fuller was not permitted to call requested witnesses and to cross examine those witnesses who had made anonymous phone calls and unverified statements and who had been involved in false reporting and a cover-up.

56B. Don Fuller was denied the opportunity for a more convenient and cost effective forum in Washington D. C. where some of the Don Fuller's character witnesses resided and were present.

56C. The senior member, a Marine Colonel Belknap was inattentive and did not read all of the exhibits nor did he understand the laws of Minnesota relating to the submission of a false police report.

56D. Marine Colonel Belknap was inattentive and out in the halls a lot and did not have the time to properly perform and discharge his duties.

56E. Marine Colonel Belknap failed to take adequate precautions to assure that inflammatory and confidential documents not in evidence were kept from the members of the board.

56F. Marine Colonel Belknap lost his temper and threw his pencil while

Don Fuller was testifying thereby undercutting the testimony and character of the Don Fuller whose word and exculpatory polygraph were the main defense to the false police report submitted by a woman with a history of drinking problems and hallucination.

56G. Marine Colonel Belknap lost his temper and influenced the junior members of the board.

56H. At least one member of the board of inquiry reviewed evidence not presented to the board in the form of the Confidential ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991.

56I. Confidential ("DIS") report (90208-D11-3230-2A1 Supp) dated August 1, 1991 was in plain view of board members on September 17, 1991, as they passed a book shelf in an open area in the federal building in which the hearing was held.

56J. Despite Don Fuller's request to the appointed defense counsel to protect the record, Don Fuller was told not to be technical, to just get through the hearing, and that and other matters would be brought up on appeal.

56K. Marine Colonel Don Fuller's attorney made statements during closing argument which further impugned the character and reputation of the Don Fuller who had been the only testifying witness against the no-show woman who filed a false police report concerning a contested incident in the civilian community while Don Fuller was in a

no pay status, in a no duty status, in a not physically qualified for duty status, and upon which all matters were resolved in favor of Don Fuller.

56L. The administrative discharge board senior member would not let Don Fuller discuss conversations with General officers of the Marine Corps which conversations contradicted the comments of the person making the false police report and Judith K. Dutcher.

56M. Marine Colonel Don Fuller was unable to receive requested information from ("DIS") before the hearing but which was then erroneously and unlawfully put before the hearing panel.

56N. After the administrative discharge board hearing Marine Colonel Don Fuller was informed that ("DIS") has not provided the requested information for more than 5 months due to "<u>administrative error</u>".

56O. Marine Colonel Don Fuller was informed that ("DIS") has not provided Don Fuller with the information which was illegally before the hearing panel because ("DIS") did not then have that information in their headquarters.

56P. The board considered information regarding the Marine Colonel Don Fuller's actions <u>subsequent</u> to the alleged act of misconduct even though said actions by Don Fuller were explainable and permissible under the Lawyer's Rules of Professional due to the privilege

and requirement of being zealous in the defense of a client.

56Q. The failure to provide the requested DIS information which was in the hands of one board member and in view of other board members has prejudiced the rights of Marine Colonel Don Fuller.

57. That Marine Colonel Don Fuller was informed by the Commandant of the Marine Corps that Marine Colonel Don Fuller had to elect by March 16, 1992 whether to be reduced in grade to Lieutenant Colonel and retired or to be discharged without retirement benefits.

58. That the Secretary of the Navy presently maintains security clearance, medical records, and official military records of Marine Colonel Don Fuller which contain references to the false police report and resulting court action in which all matters were resolved in favor of Don Fuller.

59. That the Secretary of the Navy presently maintains records of Don Fuller which contain the Confidential Information

Summary Reports prepared on Marine Colonel Don B. Fuller by Defense Investigative agents and or former DIS agents, Robert Turay, Lee Sampson, Lee Olson, and DIS agent Haurilick which have been reported to be fictionalized, reportedly are fabricated, and were reportedly illegally and improperly obtained.

60. That Don Fuller has requested the expungement of all records hereinafter held as follows:

THE HONORABLE H. L. GARRETT III

SECRETARY OF THE NAVY

THE PENTAGON

WASHINGTON, D. C.

Expunge all records and data of Don Bedelle Fuller (d.o.b. 1-11-44), along with any portions of files of Defense Investigative reports which are included in any Navy Department and United States Marine Corps DOD personnel report, investigation report, or formal board or

inquiry report and endorsements thereon, or official or other correspondence which contains any of the information included in Defense Investigation Service Information Summary Report (90208-D11-3230-2A1) dated July 31, 1990, and Reports Defense Investigation Service Information Summary Report (90208-D11-3230-2A1 Supp) dated August 1, 1991.

Request the return of all information relating to Don Bedelle Fuller, (d.o.b 1-11-44), from all agencies to which such information has been provided, including but not limited to, The Secretary of Defense, the United States Marine Corps, The Defense Investigative Service, the Federal Bureau of Investigation, and the National Crime Information Center.

Expunge all records and data of Don Bedelle Fuller (d.o.b. 1-11-44), along with any portions of files or criminal history reports stemming from Eden Prairie Police File Nos. 89012943, dated

9-25-89 and 90004276, dated 4-4-90 (D.C. File Nos. 90033312; 90070184), issued in Hennepin County, Minnesota and which were based on an initial false police report. Request the return of all information relating to Don Bedelle Fuller, d.o.b 1-11-44, from all agencies to which such information has been provided, including but not limited to, the Minnesota Department of Public Safety, the Federal Bureau of Investigation, and the National Crime Information Center. The request shall also include a request to expunge all portions of criminal history reports concerning the non-arrest and non-conviction of Don Bedelle Fuller, d.o.b 1-11-44 arising from the initial false police report in which all proceedings were determined in favor of the accused.

61. That you are familiar with and have read the requirements of 18 USC 1001 prior to signing the Answers to the Request for Admission.

62. That you done things during your term of service as the Chief of Naval Operations which were illegal.

63. That you have done things during your term of service as the Chief of Naval Operations or as the Secretary of the Navy which brought discredit to the United States Navy reputation for truthfulness.

64. That you have done things during your term of service as the Chief of Naval Operations or as the Secretary of the Navy which brought discredit to the United States Navy reputation for integrity.

65. That you have done things during your term of service as the Chief of Naval Operations or as the Secretary of the Navy which brought discredit to the United States Navy reputation for candor in dealing with the public.

66. That you have done things during your term of service as the Chief of Naval

Operations or as the Secretary of the Navy which brought discredit to the United States Navy reputation for candor in dealing with victims of crimes committed by naval personnel.

67. That you have committed a crime under the United States Code of Military Justice as a result of your actions or inactions involving the Tailhook investigation.

68. That you have committed a crime under the United States Code of Military Justice as a result of your actions or inactions in failing to release the Tailhook investigation.

69. That by your words or your failure to speak you have misled Congress.

70. That by your words or your failure to speak you have misled America citizens while you were the CNO or the Secretary of the Navy.

71. That you have permitted a Navy Admiral or a Marine General officer to remain on active duty at a time when you have known

but you have failed to properly report that they have committed an offense under the Uniform Code of Military Justice.

72. That you have permitted a Navy Admiral or a Marine General officer to remain on active duty at a time when you have known but you have failed to take all required action to commence the process required by the Uniform Code of Military Justice.

73. That despite your reading of 18 USC 1001, you are continuing to withhold the Tailhook investigation.

Dated: March 25, 1993.

By: Don B. Fuller

Don B. Fuller, Pro Se
570 Minnesota Law Center
Minneapolis, Minnesota
55402
612-332-0938

APPENDIX K

Citations to U.S v. Kelly, United States Navy-Marine Corps Court of Military Review 93-00141 Published 13 June 1994

A case involving the favored status of Yeoman Seaman [YNSM] H. Lawrence Garrett, IV, who was not processed for administrative discharge despite being found guilty of active-duty use of marijuana, larceny of food and gasoline, receipt of stolen property, and soliciting another to steal. YNSN Garrett was son of the then-Secretary of the Navy H. Lawrence Garrett III who was asked to resign his office by President Bush.

Citations from the Court of Military Review Decision

In the case of the son of the Secretary of the Navy, "...the military justice process was infected throughout by senior naval officers who considered the accused rather than what he had done."

"We do find that RADM Williams, due to his close personal relationship with the Secretary, engaged in actions of favoritism towards [the Secretary's son] to such an extent that NIS agents believed he might have been obstructing justice."

"Preferential treatment of a suspect based on his family relationship to a high-ranking officer or civilian has no place in

any reputable justice system." "....the integrity and fairness of the military justice system cannot accept such a result."

The Secretary's son, "...was not processed for administrative discharge following the Article 15 proceeding. Not only is it uncommon, but it is extraordinary that a Sailor could be found to have used marijuana repeatedly, to have stolen property using stolen credit cards taken from a Navy mail room, to have received stolen property by using those cards, to have asked another Sailor to steal a vacuum cleaner by using another Sailor's stolen credit card, and to have lied to NIS agents under oath and then be retained on active duty without being processed for discharge. In this case, that result is not inexplicable. Based on out experience, we state with confidence that, absent extraordinary circumstances, any other Sailor in the U. S. Navy who faced such charges would have been tried by a court-martial.

"In summary, we find that YNSN's transfer was based solely on his status as the son of the Secretary. The decision that his offenses should be disposed of at an Article 15 proceeding and that he would not be processed for administrative discharge thereafter was based on that same status.

APPENDIX L

DEFENSE INVESTIGATIVE SERVICE
1900 Half Street S.W.
Washington, D. C. 20324-1700

February 20, 1992

Mr. Don B. Fuller
570 Towle Building
330 Second Avenue South
Minneapolis, Mn 55401

Dear Mr. Fuller:

On October 1, 1991, we received your request of September 24, 1991, for investigative records concerning you. This response has been delayed due to administrative error. We regret any inconvenience we may have caused you.

Attached is a copy of all documents in this investigative file maintained by the Defense Investigative Service (DIS) concerning you.

We appreciate having been able to serve you in this matter. If you have any questions regarding the contents of your file or the information released to you, please feel free to contact my office.

Sincerely,

DALE L. HARTIG Chief, Office of Information and Public Affairs

THIS IS THE END OF PETITIONER'S APPENDICES

Respectfully Submitted as of October 10, 1994

Don Fuller, Pro Se
570 Minnesota Law Center
Minneapolis, MN 55402
612-332-0938